IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12837 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MALEK IMRANMIYA ZAHIRMIYA

Versus

STATE OF GUJAAT

Appearance:

1. Special Civil Application No. 12837 of 2004

MR VA MANSURI for Petitioner No. 1

MR SP HASURKAR, AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 28/02/2005

ORAL JUDGEMENT

Rule. Learned AGP Mr.Hasurkar waives service of notice of rule on behalf of the respondents. At the joint request of the learned advocates appearing for the

parties, the petition is taken up for final disposal today.

2. In this petition, the petitioner has challenged the communication dated 24th March, 2003, 24th July 2003 and 25th June 2004. The petitioner has also prayed for a direction to appoint him on compassionate grounds on any suitable post.

3. A few facts necessary to decide the present petition can be noted. The father of the petitioner who was working as Unarmed Head Constable with the respondents expired while in service on 30th August 2002. The petitioner was minor at the time of the death of his father and therefore could not apply for appointment on compassionate grounds. However, shortly after attaining majority, the petitioner applied for being appointed on compassionate grounds on 12.6.04. The application of the petitioner, however, came to be rejected. Earlier also attempt on the part of the family of the deceased Government servant to secure employment for the petitioner on compassionate ground had failed. The only ground on which the respondents have turned down the request of the petitioner was that there were other members of the family who were major at the time of death of the Government servant and that therefore, as per the prevalent Government policy, the petitioner cannot be permitted to make an application after attaining majority.

4. By communication dated 24th June 2004, it was conveyed to the petitioner that as per the circular of the Government dated 10th March 2000, if there are other family members of the deceased who are major at the time of his death, it is not open for the minor family member to make an application upon attaining majority. It is conveyed that if the widow of the Government servant is desirous of obtaining employment, she should apply for the same.

5. Learned advocate for the petitioner submits that it is true that the widow of the Government servant as well as the elder sister of the petitioner were major family members of the Government servant, but the said family members could not avail of the opportunity to apply for appointment on compassionate grounds since both of them suffer from serious health problems. He points out that the mother of the petitioner i.e. widow of the deceased Government servant suffers from Anemia and severe breathing problems and elder sister of the petitioner suffers from bone tuberculosis. He,

therefore, submits that both these family members of the deceased Government servant were medically unfit to claim the appointment and that therefore, the case of the petitioner ought to have been considered in light of the Government policy. He also points out that necessary medical certificates in this regard were produced before the authorities. This was supported by the affidavits from the concerned family members. He, therefore, submits that the respondents erred in rejecting the request of the petitioner solely on the ground that other family members could have availed of the appointment on compassionate ground.

6. Learned AGP supports the decision of the Government. He submits that the policy pronounced by the Government vide circular dated 10th March 2000 though permits the family member of the deceased Government servant to make application within a certain time of attaining majority, if he was minor at the time of death of the Government servant, the same is conditional on the fact that there was no other family member of the Government servant who was major and was qualified for being appointed. He further submits that as per his instructions, the petitioner has also not produced the relevant medical certificates before the authorities.

7. Considering the submissions made, it appears that the sole ground on which the application of the petitioner was turned down was that there were other family members of the deceased Government servant who could have availed of the policy of compassionate appointment. If, however, other family members were suffering from serious illness and therefore medically unfit to claim appointment, the respondents ought to have considered the candidature of the petitioner in light of the Government policy. If there is a family member of the deceased Government servant who is major and also qualified for seeking appointment on the date of death of the Government servant, but is suffering from such illness which would render him or her unfit for employment, other family member who is not major on the relevant date cannot be denied opportunity to apply for compassionate appointment upon attaining majority as per the Government circular.

8. In view of the fact that it is not undisputed that the medical certificates were produced before the authorities, it is directed that the petitioner shall produce the relevant medical certificates regarding the illness of the mother and his sister and the authorities shall examine the genuineness of the same and extent of

incapacity of the said persons to seek employment. If it is found that the claim of the petitioner regarding the sickness of the other family members is genuine, his case for compassionate appointment shall be considered on merits. If the petitioner produces the said certificates within a period of two weeks from today, the authorities shall take a final decision as directed above within a period of three months from the date of receipt of such certificates. In view of the above directions the petition is disposed of. Rule is made absolute accordingly with no order as to costs.

Direct service.

(Akil Kureshi, J.)
(vjn)